87 554

No. _____

Supreme Court, U.S.
FILED
Sept 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

STATE OF OKLAHOMA,

Petitioner,

v.

ARTHUR J. TODD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

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September, 1987

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QUESTIONS PRESENTED

1. Whether a conviction for child abuse pursuant to 21 O.S. Supp. 1986, § 843, bars a subsequent prosecution for First Degree Murder pursuant to 21 O.S.Supp. 1986, § 701.7(c), where the victim of the abuse did not die until subsequent to the prosecution for child abuse.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

No. _____

STATE OF OKLAHOMA,

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v.

ARTHUR J. TODD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

The Petitioner, State of Oklahoma, by and through the Attorney General of the State of Oklahoma, Robert H. Henry, prays that a Writ of Certiorari issue to review the judgment of the Oklahoma Court of Criminal Appeals.

OPINION BELOW

The decision of the Oklahoma Court of Criminal Appeals for which this petition is sought has not been designated for publication. The style and the court below was Arthur John Todd v. The Honorable Myrna Lansdown, Special

District Judge for Washington County, Oklahoma Court of Criminal Appeals, No. P-87-452. The opinion for which review is sought was rendered on July 31, 1987. The State of Oklahoma filed a Petition for Rehearing and the Oklahoma Court of Criminal Appeals dismissed the Petition for Rehearing on August 26, 1987. The text of the Order of the Oklahoma Court of Criminal Appeals for which review is sought is attached hereto as Appendix A, and the Order of the Oklahoma Court of Criminal Appeals dismissing the Petition for Rehearing is attached hereto as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

21 O.S. Supp. 1986, § 843 provides:

§ 843. Abuse of children-Penalty.

Any parent or other person who shall willfully or maliciously injure, torture, maim, or use unreasonable force upon a child under the age of eighteen (18), or who shall cause, procure or permit any of said acts to be done, shall be punished by imprisonment in the State Penitentiary not exceeding twenty (20) years, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.

21 O.S. Supp. 1986, § 701.7 provides:

§ 701.7. Murder in the first degree.

A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person who commits the crime of murder in the first degree when he takes the life of a human being, regardless of malice, in the commission of forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary or first degree arson.

C. A person commits murder in the first degree when the death of a child results from injuring, torturing, maiming or using of unreasonable force by said person upon the child pursuant to Section 843 of this title.

STATEMENT OF THE CASE

The State of Oklahoma seeks a review of the Order of the Oklahoma Court of Criminal Appeals granting a writ of prohibition prohibiting the State of Oklahoma in prosecuting Arthur John Todd for the crime of First Degree Murder. The

Order of the Court is attached hereto as Appendix A.

STATEMENT OF THE FACTS

On January 8, 1986, Arthur John Todd beat his three-month-old daughter. (App. A at 3a). Arthur John Todd was convicted of child abuse pursuant to 21 O.S.Supp. 1986, § 843, after former conviction of a felony, for the January 8, 1986 beating, in the District Court of Washington County, Oklahoma on April 16, 1986 (App. A at 3a). Arthur John Todd's three-month-old daughter died as a result of the January 8, 1986, beating on November 7, 1986. (App. A at 3 a). Arthur John Todd was charged with First Degree Murder in the District Court of Washington County, Oklahoma, on March 30, 1987, for the January 8, 1986, beating of his three-month-old daughter, pursuant to 21 O.S. Supp. 1986 § 701.7(c). Arthur John Todd then sought, and was granted a writ of prohibition from the Oklahoma Court of

Criminal Appeals prohibiting the State of Oklahoma from prosecuting Arthur John Todd for First Degree Murder.

REASONS FOR GRANTING THE WRIT

PROPOSITION I

THE OKLAHOMA COURT OF CRIMINAL APPEALS INTERPRETATION OF THE FIFTH AMENDMENT'S DOUBLE JEOPARDY CLAUSE OF THE UNITED STATES CONSTITUTION IS IN CONFLICT WITH OPINIONS ISSUED BY THE UNITED STATES SUPREME COURT AND SEVERAL UNITED STATES COURTS OF APPEALS.

The Respondent, Arthur John Todd, beat a three-month-old infant resulting in her death ten months later. The Respondent was convicted of child abuse before the infant died. The Oklahoma Court of Criminal Appeals prohibited the State of Oklahoma from prosecuting the Respondent for murder after the infant died. The Oklahoma Court of Criminal Appeals maintained that the exception to successive prosecutions found in Diaz v. United States, 223 U.S. 442, 448-449 (1912), was not applicable in the present case.

In Diaz v. United States, cited above, the accused was tried for assault and battery and then subsequent to the death of the victim of the assault, the accused was prosecuted for homicide. The Court stated the following:

> The death of the injured person was the principle element of the homicide, but was no part of the assault and battery. At the time of the trial for the latter the death had not ensued, and not until it did ensue was the homicide committed. Then, and not before, was it possible to put the accused in jeopardy for that offense.

Id. 223 U.S. at 449. This Court has recognized the authority of Diaz v. United States, cited above.

> An exception may exist where the State is unable to proceed on the more serious charge at the outset because the additional facts necessary to sustain that charge have not occurred or have not been discovered despite the exercise of due diligence.

Brown v. Ohio, 432 U.S. 161, 169 n. 7 (1977) (citing Diaz v. United States, 223

U.S. 442, 448-449 (1912), and Ashe v. Swenson, 397 U.S. 436, 453, n. 7 (1970) (Brennan, J., concurring)). This Court has recently recognized the continued authority of Diaz v. United States, cited above. Garrett v. United States, 471 U.S. 773, 791 (1985).

The United States Court of Appeals for the Sixth Circuit recognized the continued authority of Diaz v. United States, cited above. Mitchell v. Cody, 783 F.2d 669 (6th Cir. 1986). In Mitchell v. Cody, cited above, the Sixth Circuit held that an accused's plea of guilty to driving while intoxicated and other charges did not bar his subsequent prosecution for vehicular homicide when the victim died.

The United States Court of Appeals for the Ninth Circuit has held that a conviction for theft did not bar a subsequent prosecution for felony-murder where the prosecution was unable to

ascertain the facts necessary to sustain the greater charge prior to the theft conviction. United States v. Stearns, 707 F.2d 391, 393 (9th Cir. 1983).

The United States Court of Appeals for the Fifth Circuit has held that a conviction of manslaughter was not barred by a prior conviction of assault where the victim did not die until after the assault conviction. Culberson v. Wainwright, 453 F.2d 1219 (5th Cir. 1972).

In the present case, the Oklahoma Court of Criminal Appeals indicated that the January 9, 1986 beating could not be utilized to support a conviction for child abuse and then a subsequent charge for murder pursuant to the Fifth Amendment, notwithstanding the intervening death of the infant.

CONCLUSION

The interpretation of the Fifth Amendment by the Oklahoma Court of Criminal Appeals requires prosecutors to

delay to file charges against criminal defendants until medical science has exhausted its efforts in assisting the victims of violent crimes. Criminal defendants have a legitimate interest in having charges brought in a timely fashion, and a constitutionally mandated speedy trial. Should a prosecutor be forced to abandon a timely charge of child abuse, weighing the chances of a possible death of the victim at some indefinite time in the future, and possibly forego any charge against the perpetrator of a violent crime? The Fifth Amendment does not require such a result and the Petitioner, State of Oklahoma, respectfuly asks this Court to grant the writ of certiorari and reverse the judgment of the court below.

Respectfully submitted,

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OCTOBER TERM, 1987

STATE OF OKLAHOMA,

Petitioner,

v.

ARTHUR J. TODD,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

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September, 1987

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APPENDIX A

IN THE COURT OF CRIMINAL APPEALS
FOR THE STATE OF OKLAHOMA

ARTHUR JOHN DODD	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. P-87-452
	)	
THE HONORABLE MYRNA LANSDOWN, SPECIAL DISTRICT JUDGE FOR WASHINGTON COUNTY,	)	
	)	
Respondent.	)	

ORDER
GRANTING WRIT OF PROHIBITION

On June 24, 1987, petitioner filed a petition requesting this Court to prohibit the Honorable Respondent from proceeding with a preliminary hearing set for July 6, 1987, at 9:00 a.m. in Washington County District Court, Case No. CRF-87-112, in which the petitioner is charged with First Degree Murder pursuant to 21 O.S. 1981, § 701.7(C). Petitioner asserts that he was previously charged and convicted of Child Abuse (21 O.S.Supp. 1982, § 843) in Washington County District Court, Case

No. CRF-86-9, on April 16, 1986, that he was sentenced to seventy-five (75) years imprisonment and ordered to pay $10,000.00 to the victim's compensation fund, and that the subsequent and successive prosecution for first degree murder violates the double jeopardy provisions of the Fifth Amendment, Article II, § 21 of the Oklahoma Constitution and 21 O.S. 1981, § 11.

On June 30, 1987, this Court stayed the proceedings pending resolution of the petition for writ of prohibition, directed a response from the Honorable Respondent, denied the request for oral argument, and granted petitioner a reasonable time to file the applicable transcripts. On July 15, 1987, Washington County District Attorney Craig Corgan filed a response on behalf of the Honorable Respondent. On July 17, 1987, petitioner filed a transcript of the motion hearing held on May 26, 1987,

before the Honorable Respondent.

On July 8, 1986, petitioner beat his three-month-old daughter, Rebecca Todd, in a single criminal transaction. On April 16, 1986, petitioner was convicted of Child Abuse (21 O.S.Supp. 1982, § 843), After Former Conviction of a Felony in Washington County District Court, Case No. CRF-86-9, based on the January 8, 1986, beating. Although no evidentiary hearing has been held to establish the cause of death, all of the parties agree for the purpose of this proceeding, that the victim died on November 7, 1986, as a result of the injuries she received on January 8, 1986. The Honorable Respondent relied on this view of the facts in ruling on the double jeopardy claims. (O.R.) On March 30, 1987, petitioner was charged with First Degree Murder, in Washington County District Court, Case No. CRF-87-112, under 21 O.S. Supp. 1982, § 701.7(C) which provides that "a person

commits murder in the first degree when the death of a child results from the injuring, torturing, maiming or using of unreasonable force by such person upon the child pursuant to Section 843 of this title."

The State concedes that it is relying on the beating which occurred on January 8, 1986, and which was used previously to convict the petitioner of Child Abuse, as the predicate for charging and convicting petitioner of First Degree Murder. The issue thus presented is whether the State is prohibited by former jeopardy or collateral estoppel principles from prosecuting and punishing a defendant for First Degree Murder-Child Abuse under 21 O.S. Supp. 1982, § 701.7(C), when the State has previously used evidence of the underlying abuse in a prior trial resulting in a conviction for Child Abuse under 21 O.S.Supp. 1982, § 843.

The Double Jeopardy Clause grants a

defendant three basic protections:

> It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.

North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969) (footnotes omitted). Only the latter two protections are implicated here. Therefore, we turn to consider the second protection, that is, whether petitioner's prior conviction for child abuse bars a subsequent prosecution for first degree murder based on the same incident of child abuse.

The State concedes that prosecution for the greater offense of first degree murder-child abuse would be precluded by double jeopardy principles under the general rule, since the petitioner has previously been convicted of the lesser included offense of child abuse. As the

United States Supreme Court stated in Brown v. Ohio, 432 U.S. 161, 166, 97 S.Ct. 2221, 2226, 53 L.Ed.2d 187 (1977) (footnote omitted), unless "'each statute requires proof of an additional fact which the other does not,' Morey v. Commonwealth, 108 Mass. 433, 434 (1871), the Double Jeopardy Clause prohibits successive prosecutions as well as cumulative punishment." Under Brown, we must conclude that Child Abuse under Section 843, and First Degree Murder-Child Abuse under Section 701.7(C) constitute the "same offense" for the purposes of double jeopardy. First, the lesser offense -child abuse- requires no proof beyond that which is required for conviction of the greter offense -first degree murder. Second, the prosecutor who has established child abuse need only prove the additional element of death resulting from the child abuse; the prosecutor who has established first

degree murder under Section 701.7(C) has necessarily established child abuse as well. See Brown, supra, at 167-68, 97 S.Ct. at 2226-27. Accordingly, the greater offense is by definition the "same" for purposes of double jeopardy as any lesser offense included in it.

The State maintains, however, that the exception recognized in Diaz v. United States, 223 U.S. 442, 448-49, 32 S.Ct. 250, 251, 56 L.Ed. 500 (1912), is applicable. A majority of this Court applied the so-called Diaz exception in Hinton v. District Court of Oklahoma County, 693 P.2d 1277, 1279 (Okl.Cr. 1984), while Judge Parks dissented. A careful reading of Hinton, however, convinces this Court that it is clearly distinguishable and not applicable under the facts of the instant case. Hinton involved two separate incidents of abuse some three weeks apart. The defendant in Hinton first beat the victim on October

1, 1987, and was subsequently tried and convicted of Child Abuse based on this beating. The second beating occurred on October 22, and the victim died as a result of these injuries. Although the State presented evidence of the second beating at the trial, the defendant was not tried for the second beating. As Judge Brett stated:

> The State chose. . . to prosecute only on the first beating while introducing evidence of both. As the appellant was not tried for - and thus never in jeopardy for - the October 22 child beating, the constitutional guarantee against being twice tried for the same offense in inapplicable.

Hinton, 693 P.2d 1278. The Court in Hinton held that the doctrine of estoppel barred the State from prosecuting the defendant for child abuse based on the second beating, because the State introduced evidence of the second beating in the trial where the defendant was convicted of child abuse based on the

first beating. The Court held that under Diaz, however, the State was not barred from prosecuting the defendant for first degree murder based on the October 22 beating. Hinton, supra, at 1278-79. In the instant case, the petitioner was clearly tried and thus placed in jeopardy for the beating which the State seeks to rely upon for a first degree murder prosecution. This fact alone clearly distinguishes this case from Hinton. For the purposes of this proceeding, the parties agree that the victim died as a result of the January 8, 1986, beating. The record shows that petitioner has already been tried, convicted, and sentenced to seventy-five (75) years imprisonment based on the child abuse incident. We hold that the application of the Diaz exception in Hinton should be limited to its particular factual situation. Thus, we find that Hinton is materially distinguishable from the instant case and

is not dispositive. Accordingly, we hold that the subsequent prosecution for first degree murder in the instant case is barred by the double jeopardy provisions of the Fifth Amendment and Article I, § 21 of the Oklahoma Constitution.

IT IS THEREFORE THE ORDER OF THIS COURT that the writ of prohibition shall be **GRANTED** prohibiting the State from prosecuting petitioner for First Degree Murder in violation of 21 O.S. Supp. 1982, § 701.7(C) in Washington County District Court, Case No. CRF-87-112. The stay previously granted is hereby **VACATED** consistent with this order.

IT IS SO ORDERED.

WITNESS OUR HAND AND THE SEAL OF THIS COURT this 31st day of July, 1987.

_____
TOM BRETT, Presiding Judge

_____
ED PARKS, Judge

ATTEST:

_____ (Clerk)
James Patterson

APPENDIX B

IN THE COURT OF CRIMINAL APPEALS
FOR THE STATE OF OKLAHOMA

ARTHUR JOHN DODD Petitioner, vs. THE STATE OF OKLAHOMA, Respondent.	)	No. P-87-452

ORDER DISMISSING PETITION FOR REHEARING AND DENYING REQUEST FOR PUBLICATION

On August 20, 1987, the Respondent State of Oklahoma filed a petition for rehearing in the above-styled cause. The petitioner filed a response, and a motion to publish the order filed in the above-styled cause on July 31, 1987. The Rules of the Court of Criminal Appeals, 22 O.S. 1981, Ch. 18, App. do not provide for petitions for rehearings in original proceedings. Accordingly, the petition should be, and the same hereby is, DISMISSED.

FURTHER, the motion for publication is **DENIED.**

IT IS SO ORDERED.

WITNESS OUR HAND AND THE SEAL OF THIS COURT this 26th day of August, 1987.

_____
TOM BRETT, Presiding Judge

_____
ED PARKS, Judge

ATTEST:

_____ (Clerk)
James Patterson

Supreme Court, U.S.
FILED
OCT 28 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-554 (3)

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

STATE OF OKLAHOMA,

Petitioner,

v.

ARTHUR J. TODD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
FROM THE OKLAHOMA COURT OF CRIMINAL APPEALS

JURISDICTIONAL STATEMENT AND BRIEF OF RESPONDENT

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QUESTION PRESENTED

1. Whether the State of Oklahoma's Court of Criminal Appeals correctly interpreted Oklahoma's Constitution Article II, Section 21 and 21 O.S. §11 by prohibiting multiple punishments for a single criminal act and correctly proscribed subsequent prosecution under Oklahoma's statutory framework for first degree murder pursuant to 21 O.S. §701.7 (c) where a criminal defendant was previously tried by jury and convicted of the lesser included offense of child abuse pursuant to 21 O.S. §843 for a single offense.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

No. 87-554

STATE OF OKLAHOMA,

Petitioner,

v.

ARTHUR J. TODD,

Respondent.

JURISDICTIONAL STATEMENT AND RESPONDENT'S BRIEF IN OPPOSITION

RELEVANT CONSTITITIONAL AND STATUTORY PROVISIONS

In addition to those statutory provisions set forth in the Petition for Writ of Certiorari, Respondent submits the following as relevant constitutional and statutory provisions:

Article II, Section 21 of the Oklahoma Constitution provides:

§21. Self-incrimination-Double jeopardy.

No person shall be compelled to give evidence which will tend to incriminate him, except as in this Constitution specifically provided; nor shall any person, after having been once acquitted by a jury, be again put in jeopardy of life or liberty for that of which he has been acquitted. Nor shall any person be twice put in jeopardy of life or liberty for the same offense.

21 O.S. Supp. 1986, §11 provides:

§11. Specific statutes in other chapters as governing-Acts punishable in different ways.

If there be in any other chapter of the laws of this state a provision making any specific act or omission criminal and providing the punishment therefor, and there be in this penal code any provision or section making the same act or omission a criminal offense or prescribing the punishment therefor, that offense and the punishment thereof, shall be governed by the special provisions made in relation thereto, and not by the provisions of this penal code. But an act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, except that in cases specified in §§51 and 54, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can

> he be punished under more than one; and an acquittal or conviction and sentence under either one, bars the prosecution for the same act or omission under any other law. (emphasis supplied).

JURISDICTIONAL STATEMENT AND RESPONDENT'S BRIEF IN OPPOSITION

Respondent submits that there exists adequate state statutory and constitutional basis for the Oklahoma Court of Criminal Appeals' decision. Further, that the decision rendered does not present a federal question or unresolved important question to federal law but rather an interpretation of Oklahoma's equivalent double jeopardy provision in Article II, Section 21 of the Oklahoma Constitution and interpretation of specific statutory provisions and their application to the facts of this particular case.

The Oklahoma Court of Criminal Appeals' interpretation of the statutory provisions in question, (i.e. - 21 O.S. §843 and 21 O. S. §701.7(c)) concerning the double jeopardy

issue is harmonious with constitutional statutory framework of Article II, Section 21 of Oklahoma Constitution and 21 O. S. §11.

The Oklahoma Court of Criminal Appeals has already determined, in accordance with Missouri v. Hunter, 103 S.Ct. 673, 679 (1983), that §843 and §701.7(c) constitute the "same offense" for purposes of double jeopardy under the Brown v. Ohio and Blockburger v. United States test requiring that each statute require proof of an additional fact which the other does not. (At page 6a, Appendix to Petition for Certiorari) As this Court has previously held, it is bound to accept a State Court's construction of that State's statutes. O'Brien v. Skinner, 414 U.S. 524, 531, (1974).

The Oklahoma Court of Criminal Appeals, in its opinion (at page 5a, Appendix to Petition for Certiorari), noted that:

> "The State concedes that prosecution for the greater offense of first

> degree murder - child abuse, would be precluded by double jeopardy principles under the general rule, since Petitioner (Respondent) has previously been convicted of the lesser offense of child abuse."

See Harris v. Oklahoma, 97 S.Ct. 2912, 2913 (1977).

Thus, no remand is necessary to determine whether 21 O.S. §843 is a lesser included offense of 21 O.S. §701.7 (c) as was the case in Illinois v. Vitale, 447 U.S. 410, 421 (1980).

In Whalen v. United States, 445 U. S. 684, (1980), this Court held that where two statutory provisions proscribed the same offense, they are construed not to authorize cumulative punishments in the absence of a clear indication of contrary legislative intent.

The judgment below, based upon a non-federal ground and involving an interpretation of state constitutional and statutory provisions by the highest State Court, was adequate to support the Court's finding and not repugnant the Constitution,

laws and treaties of the United States and therefore, should not be disturbed. (Herb v. Pitcairn, 324 U. S. 117 (1954))

The Respondent submits the singular question is one of State Constitutional law and statutory framework and that this Court has already determined that a State Constitution may provide more protection than the U. S. Constitution's 5th Amendment. Oregon v. Kennedy, 456 U.S. 667, 680-681, (1982) (Brennan, J., concurring). Thus, since Oklahoma's Constitutional and statutory provisions, as interpreted by the Oklahoma Court of Criminal Appeals, prohibit multiple punishments and prosecutions under these facts, there is no federal question upon which Petitioners may rely for jurisdiction to grant certiorari, pursuant to 28 U.S.C.A. §1257 (3), or Rule 17 of this Court.

Respondent submits that this Court has long held that it has no control over issues that are determined wholly on state grounds,

and has remanded cases repeatedly to State Courts for a determination of whether the decision was so based. Fox Film Corp v. Muller, 296 U. S. 207 (1935) and California v. Krivda, 409 U. S. 33 (1972).

Respondent would show that the cases urged by Petitioner in support of this subsequent multiple prosecution are clearly distinguishable in that those cases involve volitional action on the part of the Defendant in entering a plea of guilty to the lesser included or predicate felony and are thus distinguishable from Respondent's case in which he plead not guilty and was subsequently convicted in a trial by jury. The other cases urged by Petitioner are also distinguishable in that they involve federal decisions interpreting specific federal statutory schemes which provide specifically for multiple punishment for a single act. These cases involve Continuing Criminal Enterprise drug cases or RICO prosecutions.

The Petitioner herein raises no

substantial federal question which this Court should decide. Furthermore, the State Court judgment was based on non-federal grounds and in compliance with federal standards for specific statutory provision for multiple prosecutions and punishments for single criminal acts.

The Oklahoma Court of Criminal Appeals was able to render its decision on adequate and independent state grounds. Accordingly, the judgment of the Court below should stand and the request for this Court to grant Certiorari should be denied.

CONCLUSION

Respondent respectfully submits that the question upon which this cause depends is so unsubstantial as to not need further argument and adequate state grounds support the lower Court's decision. Since none of the grounds enumerated in this Court's Rule 17 justifying an appeal has been shown, Respondent respectfully moves the Court to

deny the request for certiorari or in the alternative, to affirm the judgment entered in the cause by the Oklahoma Court of Criminal Appeals.

Respectfully submitted:

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